

Extending the Lesson - Lesson 2: **The Privileges of Citizenship**

FACT SHEET #2

Did President Lincoln violate the U.S. Constitution by suspending *habeas corpus* in 1861 and 1862? You decide . . .

At the beginning of the Civil War, the “Peace Democrats” (called Copperheads by their enemies) proposed a peaceful solution to the developing conflict: a truce with the South depended on holding a new constitutional convention to amend the U.S. Constitution in order to strengthen and protect the States’ rights. Neither the North nor the South took the proposal seriously. Even so, the Peace Democrats publicly criticized Lincoln for his belief that violating a part of the U.S. Constitution was a necessary evil in order to save it as a whole. While Congress was not in session and not scheduled to return for a few months, Lincoln assumed all powers not specifically delegated in the Constitution, including the power to suspend *habeas corpus*. *Habeas corpus* is a Latin term that literally means “you have the body,” but it refers to a person’s right to be seen by a judge and officially charged with a crime in order to be held in jail for any length of time. In 1861, Lincoln had already declared martial law in territories where the North’s military power could face opposition, and in 1862 he suspended *habeas corpus* nationwide. This allowed the North’s military authority to arrest and imprison many Peace Democrats. Lincoln declared that all persons who discouraged Union enlistment or otherwise engaged in “disloyal practices” would be subject to arrest.

John Merryman, a Maryland secessionist, was among the 13,000 people arrested under martial law. Immediately, Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, issued a writ of *habeas corpus* commanding the military to bring Merryman before him. The military refused to comply with the writ. Then, in what is known *Ex Parte Merryman*, Justice Taney ruled that Lincoln’s suspension of *habeas corpus* was unconstitutional because the writ could only be suspended by an Act of Congress. President Lincoln and the military ignored Justice Taney's ruling.

After the war, in 1866, the Supreme Court officially restored *habeas corpus* in *Ex parte Milligan*, ruling that military trials were illegal in areas where the civil courts were capable of functioning.

Answer the following questions:

- Who were the Copperheads?
- Give one example of something Lincoln did that the Copperheads believed violated the U.S. Constitution: